IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 150 of 2006

BALWANT SINGH KHAMESARA
V/S
ASGAR ALI

Mr. VIKAS BALIA, for the appellant / petitioner

Date of Order : 17.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed by the plaintiff landlord, against the impugned judgments of the two learned courts below, dismissing the plaintiff's suit for eviction. The suit was filed on the ground of subletting and material alteration.

It is contended by learned counsel for the appellant, that the defendant by making openings in the wall situated between two shops, being No.245 and 246, and by changing the flooring, has materially altered the premises, more so because, the two shops belonged to two different landlords, and are let out to two different tenants, and by this alteration, both the tenants being united, and are thus, adversely affecting the landlords' rights as well. Regarding subletting, it was submitted, that admittedly, the tenant-defendant has entered into a

partnership with the Sadari Centre, and neither the partnership deed has been produced on record, nor has it been satisfactorily shown by the defendant-tenant, that he continues to retain substantial interest in the partnership, so also the possession over the shop, as such, it has clearly established that the tenant has sublet the premises to the Sadari Centre, and therefore, the suit has wrongly been dismissed.

I have considered the submissions and have gone through the impugned judgments.

At the outset, it may be observed, that the plaintiff has very intelligently cooked up the stories, very impressive submissions have been made in the above form, by the learned counsel for the appellant, but then, the perusal of the two judgments of the learned Courts below disclose the real colours of the plaintiff, and on proper appreciation thereof, in my view, the learned Courts below were right in dismissing the plaintiff's suit.

The things as emerge from the judgment of the learned trial court are, that the defendant along with his sons was already tenant in the suit shop carrying on their business in the suit shop in the name of Sadari Centre, and shop no. 246 was in tenancy with other tenant, being Rajasthan Art Studio. The shop no. 246 belongs to

plaintiff's wife, while the adjoining shop being shop no. 245, being the suit shop, belongs to the plaintiff. In this background, after the erstwhile tenant of shop no. 246 was vacated, that shop was let out to defendant's son Iqbal Ali, and it is not in dispute that business in the name and style of Sadari Centre is being carried on in both the shops, i.e. by the defendant and his sons. Likewise it has also been found by the learned trial court, that on the first floor of the two shops, belonging to two different persons being the husband and wife; one single hall was constructed, and that hall has been let out to the firm of the defendant itself, thereon the business is being carried on, and appreciating this factual situation, the learned trial court has found the version of the defendant to be more reliable, about the plaintiff himself having made the alteration.

It is true that the defendant's version was, that it was the plaintiff, who himself had made the alterations prior to letting out, and on this aspect, learned lower Appellate Court did not give any finding. However, a look at the judgment of the learned trial Court, which deals with the matter in detail, does clearly show the real picture. Admittedly the defendant and his sons are carrying on the business in the shops and nobody-else.

During course of arguments learned counsel for the

appellant did not dispute this position, that the two shops being No.245 and 246 are owned by the husband and wife respectively, and the rent note of the two shops is in the name of the father and son respectively, and that, in the shops, these very, father and son, are carrying on the business. It is significant to note, that the above finding of fact, recorded by the learned trial Court, about the alteration having been done by the plaintiff's husband himself, before letting out the premises, has not been set aside by the learned lower Appellate Court, and nothing was shown on the side of the appellant, as to how that finding is not sustainable.

It is significant to note, that the learned counsel has submitted, that on identical lines the wife of the appellant has also filed a suit against the son, being tenant of the shop no. 246, again alleging the shop to have been sublet, and that suit too has been dismissed by the learned courts below.

Thus, on overall comprehension of the situation, the things that emerge are, that the husband and wife being one, though hyper- technically being different identities, collectively owning the two shops, again hyper-technically in individual's name, and having let out both the shops to the father and son, shop No.246 having been let out when the two defendants were already carrying on business in the

shop No.245, in the name of Sadri Centre, notwithstanding the fact, that again hyper-technically that shop was in the tenancy of the father, and admittedly, this very business in the name of Sadri Centre is being carried on in both the shops, and again admittedly, one hall having been constructed, collectively on both the shops, and having been let out to the firm of the defendants itself.

All this does clearly show, that the plaintiff has simply resorted to extreme hyper-technicalities of law for ulterior motives, say arm twisting of the tenants, by simulating the grounds of subletting, and material alterations. In my view, the two learned Courts below have rightly negatived the grounds and dismissed the suit.

It may be noticed here that another appeal filed by the wife of the plaintiff appellant, being S.B. Civil Second Appeal No. 117/2006, has already been dismissed by me on 14.7.2006.

The appeal thus, does not involve any substantial question of law, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/